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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 103

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
v.
TRUCK DRIVERS LOCAL UNION No. 449, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, A. F. L.,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MOTION FOR SPECIAL LEAVE TO FILE SUPPLEMENTAL BRIEF FOR LINEN AND CREDIT EXCHANGE, OMAHA-COUNCIL BLUFFS BAKERY EMPLOYERS LABOR COUNCIL, BAY AREA COUNCIL OF BAKERY OPERATORS, BOSTON BAKERY EMPLOYERS LABOR COUNCIL, CHICAGO BAKERY EMPLOYERS LABOR COUNCIL, SEATTLE BAKERS' BUREAU, BAKERS OF WASHINGTON, INC., NEW YORK CITY BAKERY EMPLOYERS LABOR COUNCIL, FEDERATED EMPLOYERS OF NEVADA, INC., GREATER NEW YORK AND NORTHERN NEW JERSEY MILK DEALERS' LABOR COMMITTEE, AS *AMICI CURIAE*

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FREDERICK G. TATE

IN THE

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NATIONAL LABOR RELATIONS BOARD, *Petitioner*, v. TRUCK DRIVERS LOCAL UNION NO. 449, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, A. F. L., *Respondent*.	No. 103

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The Linen and Credit Exchange, which is directly involved in this case, and the other *amici curiae* named above, respectfully move that its counsel be granted leave to file a Supplemental Brief in the form attached hereto.

As justification for this motion *amici curiae* state that the argument set forth in the said brief supplements, clarifies and emphasizes contentions presented in the briefs heretofore filed in this case and at the oral argument; that counsel for these *amici curiae* intended to present these matters to the Court by oral argument for which he had been allocated by the Solicitor General ten minutes of the latter's time; that the Solicitor General used his entire allotted time and that counsel was accordingly deprived of the oppor-

tunity to present these matters to the Court at the hearing of this case; and that counsel also refrained from filing a supplemental brief prior to the oral argument in the belief that these matters would be clarified and emphasized by counsel at the oral argument.

It is also believed that many of the matters dealt with in the said brief are responsive to questions raised by the Court and not adequately answered either in the briefs heretofore filed or upon the oral argument.

Amici curiae therefore respectfully move that this Court grant its counsel leave to file said supplemental brief.

Dated: January 25, 1957.

Respectfully submitted,

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SUPPLEMENTAL BRIEF FOR LINEN AND CREDIT EXCHANGE, ET AL., AS AMICI CURIAE.

While the Board, upon the oral argument, was noncommittal, all *amici* concur in the contention, fully set forth in the briefs of some *amici*, that a single employer may properly lock out his employees as part of the bargaining process and in the absence of anti-union motivation. See Meltzer, *Single-Employer and Multi-Employer Lockouts Under the Taft-Hartley Act*, 24 U. of Chicago L. Rev. 70 (Autumn 1956). The legality of such a lockout is recognized: (1) by Section 8(d)(4) (waiting period), Section 203(c) (mediation) and Sections 208(a) and 210 (imposition and vacation of injunction) of the Act; (2) by various wartime and peacetime labor orders temporarily limiting or restraining the right to lockout; (3) by the fact that the Board has on

occasion sanctioned a lockout on a relatively weak showing of economic hardship; and (4) by the preservation of the right of lockout in recent labor contracts in, *inter alia*, the steel and trucking industries. See brief on behalf of Printing Industry, p. 16-19; brief on behalf of various west coast associations, p. 13-16.

We further agree with the contention, set forth in the brief of some *amici*, that the strike was an attempt to coerce an employer in the selection of its representative for bargaining purposes. It was either an unfair labor practice under Section 8(b)(1)(B) of the Act or constituted concerted activity unprotected by the Act. It was not the traditional strike for better wages but was for the purpose of destroying, at least temporarily, the effectiveness of the Exchange as a bargaining agent, while the Union continued to recognize and deal with it.

We also agree with the Board that the strike against Frontier was a deliberate and present threat of strike against all other members of the Exchange, and that the employers were entitled to defend against it.

We go one step further, however. We contend that the strike at Frontier was more than a threat of strike against the other members of the Exchange. It was an actual and existing strike against the employer bargaining unit, which functioned with the consent of both the Union and the employers. As a practical matter, the reaction of the employers was almost automatic. There was only one way for them to assure that the principal object of the bargaining arrangement would be carried out—namely, to close the other plants and thus assure that bargaining with the Union would remain on the recognized multi-employer basis.

This view of the multi-employer bargaining process renders unnecessary consideration of the legality of a single employer lockout for bargaining purposes, since the

strike at Frontier is, in fact, a strike against the Exchange itself. It also renders unnecessary consideration of whether the strike was an unfair labor practice or an unprotected activity, since, whether or not the strike was technically unfair, the employers were entitled to defend against it.

The multi-employer bargaining procedure, is, in fact, a unique, unitary concept with an established record for reducing industrial strife. Its preservation justifies employers in taking normal steps to protect the bargaining system agreed upon, certainly in the absence of any action on the part of the Union to disaffirm the system.

The unitary nature of the bargaining arrangement is established by a history of bargaining for thirteen years on that basis, and by the fact that the Union at all times recognized the Exchange as the agent for its members and reaffirmed that recognition by continuing to bargain with it while the strike was in effect. It is also established by the fact that there was but one collective bargaining agreement, and not eight different agreements between the Union and each member. The single agreement was signed by the Union, the Exchange and all employer members of the Exchange, whereupon conformed copies were given to all signatories. R. 17.

The ultimate question in this case is whether the Exchange members have committed an unfair labor practice. Whatever was done by them in this case was eminently fair. Whatever coercion might exist was on the other foot. It was the Union which used the strike against one employer to coerce the Exchange into a weakened bargaining position. The employers' response was designed to, and in this case was successful in, preserving for the future a multi-employer bargaining arrangement which has been found so stabilizing, so beneficial to labor and industry, and so productive of labor peace in many small industries in so many localities.

CONCLUSION

We respectfully submit that the judgment of the Court below should be reversed.

Dated: January 25, 1957.

Respectfully submitted,

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